

THE MINING COMMISSION

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-*Not an official or unofficial Attorney General Opinion

The Mining Commission Overview

- “[T]he Mining Commission is housed in [DEQ]. [N.C.G.S.] § 143B-290. The Mining Commission has the power to promulgate mining rules....” *McCrory v. Berger*, 368 N.C. 633 (2016)
- “Housed” within DEQ but a “separate” State agency organized within the Executive Organization Act of 1973 (Chapter 143B, Art. 7, Part 6).
- Comprised of members, but acts as a body or doesn’t act at all.
- Has the authority to delegate certain tasks to the chair.
- DEQ serves as staff to the Commission, and is responsible for implementing the rules, as well as, management functions, which includes “planning, organizing, staffing, directing, coordinating, reporting, and budgeting.” N.C.G.S. § 143B-10(e).
- Eight members, two of whom are ex officio, non-voting
- Previously had the authority to hear permitting appeals, no longer the case

- ▶ § 143B-291. North Carolina Mining Commission — members; selection; removal; compensation; quorum; services.

(a1) Members, Selection. — The North Carolina Mining Commission shall consist of eight members appointed as follows:

- (1) One member who is the executive director of the North Carolina State University Minerals Research Laboratory, or the executive director's designee, ex officio and nonvoting.
- (2) The State Geologist, ex officio and nonvoting.
- (3-6) One member ..., who is a representative of the mining industry.
- (7) One member ..., who is a representative of a nongovernmental conservation interest.
- (8) One member ..., who is a representative of a nongovernmental conservation interest.

- Seats (3) through (6) are appointed by the Governor subject to confirmation by the General Assembly.

- Seats (7) and (8) are appointed upon the recommendation of the General Assembly.

► § 143B-291. North Carolina Mining Commission — members; selection; removal; compensation; quorum; services. *Continued*

(b) Terms. — The term of office of a member of the Commission is four years, beginning effective January 1 of the year of appointment and terminating on December 31 of the year of expiration.

...

(d) Removal. — The Governor may remove any member of the Commission from office for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of G.S. 143B-13, or for good cause.

(e) Compensation. — The members of the Commission shall receive per diem and necessary traveling and subsistence expenses in accordance with the provisions of G.S. 138-5.

(f) Quorum. — A majority of the Commission shall constitute a quorum for the transaction of business.

(g) Staff. — All clerical and other services required by the Commission shall be supplied by the Secretary of Environmental Quality. The Commission staff shall be housed in the Department of Environmental Quality and supervised by the Secretary of Environmental Quality.

► § 143B-292. North Carolina Mining Commission — officers.

(a) Officers. — The North Carolina Mining Commission shall have a chair and a vice-chair. The chair shall be designated by the Governor from among the members of the Commission to serve as chair at the pleasure of the Governor. The vice-chair shall be elected by and from the members of the Commission and shall serve for a term of two years or until the expiration of the vice-chair's regularly appointed term.

(b) Alternate Leadership in Absence of Chair Designation. — If the Governor has not designated a chair by July 1 of the year following the expiration of the term of the previous chair, then the vice-chair shall exercise the powers and duties of the chair until the Governor designates a chair or the expiration of the vice-chair's regularly appointed term, whichever first occurs. Upon the expiration of the vice-chair's regularly appointed term, the Commission shall elect a new vice-chair in the manner described in subsection (a) of this section who shall act as chair as set forth in this subsection until the Governor designates a chair as set forth in subsection (a) of this section.

► § 143B-293. North Carolina Mining Commission — meetings.

The North Carolina Mining Commission shall meet at least semiannually and may hold special meetings at any time and place within the State at the call of the chair or upon the written request of at least four members.

-The Chair is responsible for making the decision to call a special meeting.

-One basis to call a special meeting is a written request of at least four members, but the authority and decision to actually call a special meeting remains with the Chair.

§ 143B-290. North Carolina Mining Commission — creation; powers and duties.

There is hereby created the North Carolina Mining Commission of the Department of Environmental Quality with the power and duty to promulgate rules for the enhancement of the mining resources of the State.

(1) The North Carolina Mining Commission shall have the following powers and duties:

a. To act as the advisory body to the Governor pursuant to Article V(a) of the Interstate Mining Compact, as set out in G.S. 74-37. ...

c. To hear permit appeals, conduct a full and complete hearing on such controversies and affirm, modify, or overrule permit decisions made by the Department pursuant to G.S. 74-61.*

d. To promulgate rules necessary to administer the Mining Act of 1971, pursuant to G.S. 74-63.

e. To promulgate rules necessary to administer the Control of Exploration for Uranium in North Carolina Act of 1983, pursuant to G.S. 74-86.

(3) The Commission shall make such rules consistent with the provisions of this Chapter. All rules adopted by the Commission shall be enforced by the Department of Environmental Quality.

Change in the APA (Chapter 150B) and Section 74-61 of the Mining Act of 1971

- The Mining Commission originally had the authority to hear disputes regarding the issuance, denial, or modification of Departmental permit decisions.
- The authority was generally consistent with most boards and commissions administratively housed within the Department.
- Decisions by the Mining Commission, as with other such bodies, became the “final agency decision” subject to appeal to superior court on judicial review. Only the petitioner could appeal, not the Department.
- Subsequently the Administrative Procedure Act, which governs rulemaking and contested cases regarding final agency decisions, was modified to give Administrative Law Judges (ALJs) the authority to make final decisions on such appeal.
- Now both a petitioner and the Department can appeal an ALJ’s decision to superior court.
- The change was also codified in N.C.G.S. § 74-61.

The Mining Act of 1971 (Chapter 74, Article 7)

§ 74-47. Findings.

The General Assembly finds that the extraction of minerals by mining is a basic and essential activity making an important contribution to the economic well-being of North Carolina and the nation. Furthermore, it is not practical to extract minerals required by our society without disturbing the surface of the earth and producing waste materials, and the very character of certain surface mining operations precludes complete restoration of the land to its original condition. However, it is possible to conduct mining in such a way as to minimize its effects on the surrounding environment. Furthermore, proper reclamation of mined land is necessary to prevent undesirable land and water conditions that would be detrimental to the general welfare, health, safety, beauty, and property rights of the citizens of the State. The General Assembly finds that the conduct of mining and reclamation of mined lands as provided by this Article will allow the mining of valuable minerals and will provide for the protection of the State's environment and for the subsequent beneficial use of the mined and reclaimed land.

§ 74-48. Purposes.

The purposes of this Article are to provide:

(1) That the usefulness, productivity, and scenic values of all lands and waters involved in mining within the State will receive the greatest practical degree of protection and restoration.

(2) That from June 11, 1971, no mining shall be carried on in the State unless plans for such mining include reasonable provisions for protection of the surrounding environment and for reclamation of the area of land affected by mining.

§ 74-61. Administrative and judicial review of decisions.

An applicant, permittee, or affected person may contest a decision of the Department to grant, deny, suspend, modify, or revoke a permit or a reclamation plan, to refuse to release part or all of a bond or other security, or to assess a civil penalty by filing a petition for a contested case under G.S. 150B-23 within 30 days after the Department makes the decision. For purposes of this section, the date of the decision to grant, deny, suspend, modify, or revoke a permit application shall be when the Department posts the decision on a publicly available website. Article 4 of Chapter 150B of the General Statutes governs judicial review of a decision of the [Department].

-As noted earlier, the Mining Commission no longer makes the final agency decision or hears appeals regarding permitting decisions.

Primary Function is Rulemaking

- N.C.G.S. § 74-63. Rules. The Commission may adopt rules necessary to administer this Article.
- Rulemaking is a “quasi-legislative” function, meaning that the Commission is exercising its authority to make policy decisions regarding, for example, the rules it promulgates.
- Still has some “quasi-judicial” authority found in the general provisions of the Executive Organization Act, as well as other areas governed by the APA.
- Primary function is to adopt rules setting out the conditions upon which permitting decisions are made.
- Rules cannot contradict statutes and must be adopted in accordance with the APA.

QUESTIONS?

